IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.L.P..No. 831 of 2007()

STC.7776/2004 of J.M.F.C.-II, KANNUR

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PETITIONER/COMPLAINANT:

N.RAJESH,THODUPOYIL HOUSE,P.O PATHRIYAD KIZHALLOOR,KANUR DISTRICT,REP.BY POWER OF ATTORNEY HOLDER MOTHER N.CHANDNI.D/O.KUNHAPPA NAIR, THODUVAYIL HOUSE,P.O PATHRIYAD,KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH
SMT.C.C.JANCY
SRI.MOHAMMED SHAMEEL

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

2. M.C.VINOD KUMAR,S/O.VAMADEVAN, P.O PATHRIYAD,MAYILULLY MOTTA,KANNUR DISTRICT.

R1- BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL. L.P.NO.831 OF 2007

Dated this the 27th day of September, 2007.

O R D E R

This is an application filed for special leave to appeal against the order passed by the court below under Section 256(1) of the Code of Criminal Procedure. The complaint was filed in the year 2004 and the case was being posted for evidence on the appearance of the complainant. It is stated in the impugned order that the case was posted for evidence on four days continuously and in all these days either the power of attorney holder of the petitioner or the petitioner did not appear before the court. In the above circumstances, the trial court found that the petitioner was not interested to prosecute the matter further and that the petitioner was also not represented either by the counsel or any other method. As such the court cannot continue with the matter.

2 This Court had considered the entire order and found that the order is in conformity with the principles laid down by this Court as well as the Apex Court. If the petitioner in a complaint under Section 138 is not interested to prosecute the matter, even on giving

sufficient time to produce evidence for and on behalf of the petitioner and the counsel appearedI before the court, this Court is competent to pass an order under Section 226 (1) of the Code. In the above circumstances, this Court feels that this is not a fit case to interfere with the order passed by the trial court.

Accordingly, the leave application stands dismissed.

K. THANKAPPAN, JUDGE.

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